

REMARKS

Claims 24-53 were pending and stood rejected. Applicants have amended claims 24 and 43, canceled claim 25-42, 44 and 53, and added claims 54-56. In particular, claim 24 was amended to include substantially the limitations of previously presented claims 24-29, 34-37 and 41-42. Claim 43 was amended to include substantially the limitations of the previously presented claims 24, 43 and 44. Applicants respectfully submit that claim 24, 43 and 45-52 and 54-56 are allowable.

Claim Rejection - Double Patenting

Claims 24, 25, 43 and 49-53 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,928,242 (the "'242 patent"). Claims 24-48 and 53 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,700,291 (the "'291 patent"). Claims 24-53 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,489,307 (the "'307 patent"). Because the amended claim 24 is identical in scope as the original claim 42, the amend claim 43 is identical in scope as the original claim 44, and claim 49 depends on claim 24, the double patenting rejection based on the '242 patent is no longer applicable. Although applicants do not concede that the non-canceled claims are unpatentable over the claims of the '242 patent but will obviate the rejection by submitting a terminal disclaimer when allowable subject matters are indicated for the claims.

Claim Rejections - 35 U.S.C. §§ 102 and 103

Claims 24, 25 and 53 were rejected under 35 U.S.C. § 102(b) as anticipated by *Jacobson* (U.S. Patent No. 4,545,374). Claims 25 and 53 have been canceled. Applicants submit that claim 24, as amended, is not anticipated by *Jacobson*. In particular, claim 24 calls for a procedure for implanting at least two fusion implants in a disc space. *Jacobson* does not disclose such a procedure and therefore does not anticipate claim 24.

Claims 24-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Michelson* (U.S. Patent No. 5,484,437) in view of *Jacobson*. Claims 25-42, 44 and 53 have

been canceled. As to the remaining claims, claim 24 calls for a procedure for implanting at least two fusion implants in a disc space. Specifically, claim 24 recites a sequence of steps in which a distraction spacer is first inserted into the first of the two implant locations. A first implant is then inserted. The spacer is then removed, and a second implant is then inserted. These and other features of claim 24 are not disclosed by *Michelson* or *Jacobson* or any combination thereof. Claim 24 is therefore not obvious in light of the cited references.

Claim 43, as amended, is identical in scope as the original claim 44, which includes the element of selecting a boring tool having a guide pin. This element is not disclosed or suggested by either *Michelson* or *Jacobson* or any combination thereof. Claim 43 is therefore not obvious in light of the cited references. Claims 45-52, being ultimately dependent on claim 43, have additional features and advantages over prior art and therefore are also not obvious.

New Claims

Each of the new claims 54-56 is a dependent claim on claim 24 and is therefore allowable for at least the same reasons as claim 24 is allowable. Each new claim also includes additional features and advantages over the prior art. For example, claim 54 includes the element of pre-marking the locations of the implants. This step is not disclosed or suggested in any cited reference. Claim 54 therefore is allowable.

FROM FAEGRE & BENSON

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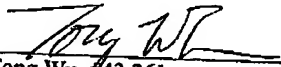
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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully Submitted,

STEPHEN D. KUSLICH et al.

By:


Tong Wu, #43,361
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
612/766-6804

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